

Internal Revenue Service, Treasury

§ 301.7430-7

resulting from the disallowance of the seminar expense. Thus, of the two adjustments determined for the year under audit, that attributable to the disallowance of the seminar is larger than that attributable to the covenant not to compete. However, due to the impact on the next succeeding four years, the covenant not to compete adjustment is objectively the most significant issue to both B and the Internal Revenue Service.

Example 3. The Collection Branch of a Service Center of the Internal Revenue Service determines in the matching process of various Forms 1099 and W-2 that taxpayer C has not filed an individual income tax return. The Internal Revenue Service sends notices to C requesting that C file an income tax return. C does not file a return, so the Service Center's Collection Branch prepares a substitute for return pursuant to section 6020(b). The calculation is sent to C requesting that C either sign the return pursuant to section 6020(a) or file a tax return prepared by C. C does not respond to the Internal Revenue Service's request and the Service Center's Collection Branch issues a notice of deficiency based on information in its possession. C does not file a petition with the Tax Court and does not pay the asserted deficiency. The Internal Revenue Service then assesses the tax shown on the notice of deficiency and issues a notice and demand for tax pursuant to section 6303. After receiving notice and demand, C contacts the Collection Branch and convinces Collection to stay the collection process because C does not owe any taxes. The Collection Branch recommends that the Examination Division examine the tax liability and make an adjustment to income. The Examination Division then redetermines the tax and abates the assessment due to information and arguments presented by C at that time. The costs C incurred before the Collection Branch are incurred in connection with an action taken by the Internal Revenue Service to collect a tax. Therefore, these costs are incurred with respect to a collection action and not an administrative proceeding. Accordingly, they are not recoverable as reasonable administrative costs. Costs incurred before the Examination Division are reasonable administrative costs; however, C may not recover any reasonable administrative costs with respect to the proceeding before the Examination Division because, as of the date the costs were incurred, C had not previously presented all relevant information under C's control and all relevant legal arguments supporting C's position to the Collection Branch or Examination Division personnel (the appropriate Internal Revenue Service personnel under § 301.7430-5(c)), and thus, the position of the Internal Revenue Service was

substantially justified based upon the information it had.

[T.D. 8542, 59 FR 29364, June 7, 1994, as amended by T.D. 8725, 62 FR 39119, July 22, 1997]

§ 301.7430-6 Effective dates.

Sections 301.7430-2 through 301.7430-6, other than §§ 301.7430-2(b)(2), (c)(3)(i)(B), (c)(3)(ii)(C), and (c)(5); §§ 301.7430-4(b)(3)(i), (b)(3)(ii), (b)(3)(iii)(B), (b)(3)(iii)(C), (b)(3)(iii)(D), and (c)(2)(ii); and §§ 301.7430-5(a) and (c)(3), apply to claims for reasonable administrative costs filed with the Internal Revenue Service after December 23, 1992, with respect to costs incurred in administrative proceedings commenced after November 10, 1988. Section 301.7430-2(c)(5) is applicable March 23, 1993. Sections 301.7430-2(b)(2), (c)(3)(i)(B), and (c)(3)(ii)(C); 301.7430-4(b)(3)(i), (b)(3)(ii), (b)(3)(iii)(B), (b)(3)(iii)(C), (b)(3)(iii)(D), and (c)(2)(ii); and 301.7430-5(a) and (c)(3) are applicable for administrative proceedings commenced after July 30, 1996. Sections 301.7430-1(e), 301.7430-2(c)(2), 7430-3(a)(4) and (b) are applicable with respect to actions taken by the Internal Revenue Service after July 22, 1998.

[T.D. 8725, 62 FR 39119, July 22, 1997, as amended by T.D. 9050, 68 FR 14320, Mar. 25, 2003]

§ 301.7430-7 Qualified offers.

(a) *In general.* Section 7430(c)(4)(E) (the qualified offer rule) provides that a party to a court proceeding satisfying the timely filing and net worth requirements of section 7430(c)(4)(A)(ii) shall be treated as the prevailing party if the liability of the taxpayer pursuant to the judgment in the proceeding (determined without regard to interest) is equal to or less than the liability of the taxpayer which would have been so determined if the United States had accepted the last qualified offer of the party as defined in section 7430(g). For purposes of this section, the term *judgment* means the cumulative determinations of the court concerning the adjustments at issue and litigated to a determination in the court proceeding. In making the comparison between the liability under the qualified offer and the liability under the judgment, the taxpayer's liability under the judgment is further modified by the provisions of